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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91225578
Party	Plaintiff Narrative Capital Partners LLC
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10 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
11 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

12
13 NARRATIVE CAPITAL PARTNERS, LLC,
a Delaware corporation,

14 Opposer,

15 v.

16 TODD SAMMANN, an individual,

17 Applicant.
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OPPOSITION TO MOTION TO DISMISS

Opposition No. 91225578

App. Serial No. 86541546

Mark: NARRATIVE CAPITAL

INTRODUCTION

Narrative Capital Partners LLC (“Narrative Capital”) hereby opposes Todd Sammann’s (“Applicant”) motion to dismiss its notice of opposition for failure to state a claim.

ARGUMENT

A notice of opposition should be a “short and plain statement.” 37 C.F.R. § 2.104(a). It should explain why a prospective registration would (1) harm the opposer, and (2) violate the law. 37 C.F.R. § 2.104(a). It should do so “simply, concisely, and directly,” with enough detail to provide “fair notice” and “state a claim to relief that is plausible on its face.” TBMP § 309.03(a)(2).

Upon a motion to dismiss, the Board should “examine a complaint in its entirety, construing the allegations therein so as to do justice.” TBMP § 503.03. This is a “context-specific task that requires . . . judicial experience and common sense.” *Aschcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It is not a scavenger hunt for “specific facts establishing a prima facie case.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 546 (2007); *accord Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (“Specific facts are not necessary . . .”) (citing *Twombly*) (per curiam). As long as a complaint includes sufficient facts to “provide fair notice” and “state a claim to relief that is plausible on its face,” that is enough. *See Twombly*, 550 U.S. at 546; TBMP § 503.03.

In this proceeding, the Notice of Opposition is a “short and plain statement” why a registration based on United States Trademark Application Serial Number 86,541,546 would (1) harm Narrative Capital and (2) violate 15 U.S.C. § 1052(d) given the high likelihood of consumer confusion between the parties’ respective investment services. It states Narrative Capital’s claim and supporting facts “simply, consistently, and directly,” with enough detail to “provide fair notice” and “state a claim to relief that is plausible on its face.”

Narrative Capital is a lender that, in addition to providing lending services, invests and solicits investments in the private markets. *See* D.N. # 1 ¶ 4. Applicant intends to provide the same, as well as highly related, services. *See id.* ¶ 6. The Notice of Opposition alleges that Applicant applied to register NARRATIVE CAPITAL for use with lending and investment services when Narrative Capital was already using the *same* mark for the *same* services, which was bound to confuse

1 providers and recipients of loans and investment capital.¹ In particular, the Notice of Opposition
2 alleges:

- 3 • The parties' marks are "identical." Opposer's mark is NARRATIVE CAPITAL. Applicant's
4 mark is also NARRATIVE CAPITAL. D.N. #1 ¶ 8.
- 5 • The parties' services are "identical," as well as "overlapping," and "highly related." Opposer
6 offers lending and investment services under the mark. Applicant apparently intends to offer
7 lending and investment services under the same mark. D.N. #1 ¶¶ 2, 7.
- 8 • Opposer enjoys priority. It used NARRATIVE CAPITAL as a trademark and trade name
9 before February 20, 2016, when the opposed application was filed.² D.N. #1 ¶¶ 4, 5.
- 10 • Consumer confusion is likely between Applicant's mark and Narrative Capital's mark due to
11 the identity of the parties' marks and identical and overlapping services. D.N. # 1 ¶¶ 8-10.

12 Such allegations easily survive a motion to dismiss. *See Nike, Inc. v. Palm Beach Crossfit Inc.*, 116
13 U.S.P.Q.2d 1025, *4 (T.T.A.B. Sept. 11, 2015) (denying motion to dismiss a similar notice of
14 opposition under 15 U.S.C. § 1052(d)).

15 Although the motion to dismiss fairly summarizes the applicable pleading standard (*see* D.N.
16 #5 p. 2), it improperly urges the Board to apply a much higher standard (*see* D.N. #5 p. 3). The
17 correct standard requires enough detail to "provide fair notice" and "state a claim to relief that is
18 plausible on its face." By contrast, the standard advocated in Applicant's motion to dismiss demands
19 numerous specific facts. For example, it demands to know "WHO" are Narrative Capital's customers,
20 although this is highly confidential information not suitable for disclosure in a public pleading. *See*
21 *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 10 U.S.P.Q.2d 1671, 1675
22 (TTAB 1988). It demands to know "WHAT" are Narrative Capital's services to a granular level of
23 detail. It demands to know "WHEN," "WHERE," "WHY" and "HOW" Narrative Capital's mark was

24 ¹ As will be proven in due course, Mr. Sammann acted in willful defiance of senior rights since he
25 *knew* when he filed his application that Narrative Capital was already using the same mark for the
26 same services.

27 ² An opposer may enjoy priority through prior use as a trademark or trade name. 15 U.S.C. § 1052(d);
28 *see, e.g., Daltronics Inc. v. H.L. Dalis, Inc.*, 158 U.S.P.Q. 475, *5 (TTAB 1968); *accord* J. Thomas
McCarthy, McCarthy on Trademarks and Unfair Competition § 20:16 (2016 Ed.) ("[A]n opposer's
use of a corporate title or business name as a trade name . . . is a proper ground for opposition")
(collecting cases).

1 first used. Although these may be appropriate subjects for discovery, they are not prerequisites to
2 “fair notice” or “a claim for relief that is plausible on its face.”

3 Applicant has not cited a single case dismissing a notice of opposition under 15 U.S.C. §
4 1052(d) for failure to allege facts with sufficient specificity. He has not advanced a single argument
5 that the notice of opposition denies him fair notice, or that the allegations therein are implausible.
6 Instead, he has effectively observed that those allegations are “short” and “plain” -- exactly as they
7 should be. Accordingly, he has not sustained his burden on this motion.

8 Although Narrative Capital need not prove its allegations in defending a motion to dismiss, it
9 may support these allegations with facts in the public record which are properly subject to judicial
10 notice. *See Nike, Inc. v. Palm Beach Crossfit Inc.*, 116 U.S.P.Q.2d 1025, *3 (T.T.A.B. Sept. 11,
11 2015); Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1357 (2016 Ed.). One
12 such fact is that Narrative Capital Partners LLC was formed under that name before the opposed
13 application was filed. *See* Exh. A (Certificate of Formation on file with the Delaware Secretary of
14 State). As will be proven in due course, it had used NARRATIVE CAPITAL as a trademark and
15 trade name even earlier than that.

16 CONCLUSION

17 For the foregoing reasons, this motion should be denied. However, if the motion is granted,
18 leave to amend should also be granted in the interests of justice. *See* TBMP § 503.03.

19
20 Dated: February 18, 2016

Respectfully submitted,

21 HARVEY SISKIND LLP

22
23 By /Naomi Jane Gray /

24 Naomi Jane Gray

25 Attorneys for Opposer,
26 Narrative Capital Partners LLP
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28

CERTIFICATE OF TRANSMISSION

I hereby certify that a true and correct copy of the attached OPPOSITION TO MOTION TO DISMISS (Opposition No. 91225578) is being electronically transmitted to the Trademark Trial and Appeal Board on February 18, 2016.

/Naomi Jane Gray/

Naomi Jane Gray

1 **CERTIFICATE OF MAILING**

2 I hereby certify that a true and correct copy of the attached OPPOSITION TO MOTION TO
3 DISMISS (Opposition No. 91225578) was served on Applicant via first-class mail on February 18,
4 2016, postage prepaid, addressed to:

5 Kim A. Walker
6 Willkie Farr & Gallagher LLP
7 787 Seventh Avenue
8 New York, NY 10019

9 /Sharan Devoto/

10 Sharan Devoto
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EXHIBIT A

Delaware

PAGE 1

The First State

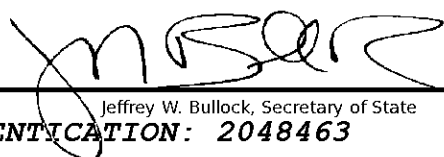
I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "NARRATIVE CAPITAL PARTNERS LLC", FILED IN THIS OFFICE ON THE SIXTEENTH DAY OF JANUARY, A.D. 2015, AT 10:46 O'CLOCK A.M.



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You may verify this certificate online
at corp.delaware.gov/authver.shtml


Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 2048463

DATE: 01-20-15

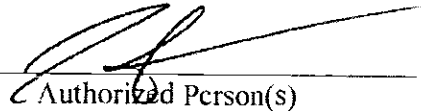
CERTIFICATE OF FORMATION
OF
Narrative Capital Partners LLC

FIRST. The name of the limited liability company is Narrative Capital Partners LLC

SECOND. The address of its registered office in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. The name of its Registered Agent at such address is Corporation Service Company.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Formation
this 15th day of January, 2015.

BY: _____


Authorized Person(s)

NAME: _____

Kevin Golden
(Type or Print Name)